

Application No. 09/770,198

REMARKS

Claims 1-17 are pending. By this Amendment, claims 1, 2, 12, 16 and 17 are amended. Claims 1, 12, 16 and 17 are amended to recite features supported in the specification on page 5, line 22 – page 6, line 32. No new matter is added by any of these amendments.

Applicants gratefully acknowledge that the Final Office Action indicates that claims 6, 8-10, 13 and 14 contain allowable subject matter. However, Applicants assert that all of claims 1-17 are allowable for the reasons discussed below.

Reconsideration based on the following remarks is respectfully requested.

I. Amendment Entry after Final Rejection

Entry of this amendment is proper under 37 CFR §1.116 because the amendments: a) place the application in condition for allowance (for all the reasons discussed herein); b) do not raise any new issues requiring further search or consideration; c) place the application in better condition for appeal (if necessary); and d) address formal requirements of the Final Rejection and preceding Office Action.

The foregoing amendments do not raise any new issues after Final Rejection. Therefore, entry of the amendments is proper under 37 CFR §1.116 because the amendments place the application in condition for allowance. Accordingly, Applicants respectfully request entry of this Amendment.

II. References are Properly Disclosed

An Information Disclosure Statement along with form PTO-1449 is attached to this Amendment. The Information Disclosure Statement submits a reference for the Examiner's consideration and formally making this reference of record.

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III. Claims 1-5, 7, 11, 12 and 15-17 Define Patentable Subject Matter

The Final Office Action rejects claims 1-5, 7, 11, 12 and 15-17 under 35 U.S.C. §103(a) over U.S. Patent 6,166,449 to Takaoka *et al.* (Takaoka) in view of U.S. Patent 5,867,009 to Kiuchi *et al.* (Kiuchi). This rejection is respectfully traversed.

Applicants assert that Takaoka and Kiuchi cannot be properly combined for rejecting claims 1-5, 7, 11, 12 and 15-17. Takaoka and the present invention are commonly owned, and Takaoka qualifies only as a 35 U.S.C. §102(e) reference. Therefore, Takaoka is disqualified as prior art under 35 U.S.C. §103. See MPEP §706.02(I)(1). However, because Takaoka was published as Japanese Patent JP 10-150701A on June 2, 1998, the following arguments are presented.

Takaoka does not teach or suggest a power output apparatus operable to generate power from an electric motor to a drive shaft, including, *inter alia*, a pattern storing unit that stores a plurality of output characteristic patterns in which the power is generated to the drive shaft, wherein an output characteristic pattern of the plurality correlates between a motor speed and an output torque for supplying the power, a pattern selecting unit that enables selecting one of the plurality of output characteristic patterns stored in the pattern storing unit by operation of an operator, and a drive controller that controls driving of the electric motor so that the power that is within a range of the selected output characteristic pattern is generated to the drive shaft, as recited in claim 1.

Takaoka also fails to teach or suggest a power output apparatus operable to generate power from an electric motor to a drive shaft including, *inter alia*, a command generating unit that enables generating a command to drive the electric motor with a driving characteristic that exceeds a rated value of the driving characteristic of the electric motor by operation of an operator, wherein the driving characteristic correlates between a motor speed and an output torque for supplying the power, and a drive controller that controls driving of the electric

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motor, wherein the drive controller is operable to control with the driving characteristic that exceeds the rated value for a limited period of time, as recited in claim 12.

Takaoka further does not teach or suggest a control method of a power output apparatus operable to generate power from an electric motor to a drive shaft including, *inter alia*, enabling a selection of one from a plurality of output characteristic patterns in which the power is generated to the drive shaft in response to an input by an operator, wherein an output characteristic pattern of the plurality correlates between a motor speed and an output torque for supplying the power, and controlling driving of the electric motor so that the power that is within a range of the selected output characteristic pattern is generated to the drive shaft, as recited in claim 16.

Takaoka additionally fails to teach or suggest a control method of a power output apparatus operable to generate power from an electric motor to a drive shaft including, *inter alia*, generating a command to drive the electric motor with a driving characteristic in response to an input by an operator, wherein the driving characteristic correlates between a motor speed and an output torque for supplying the power, and controlling driving with the driving characteristic for a limited period of time, as recited in claim 17.

Instead, Takaoka discloses a power output apparatus 10 for controlling the state-of-cell (SOC) condition of a battery 60. In particular, Takaoka teaches calculating a target state SOC* from vehicle speed and its variation. The expected SOC depends on the conditions of the driving route, described for urban, plane suburban and hill districts. See col. 11, line 42 – col. 12, line 63, col. 21, lines 22-57 and Fig. 16 of Takaoka. Thus, Takaoka fails even to teach or suggest power output control to the drive shaft and particularly based on an input by an operator. Nor does Takaoka teach or suggest such control by either an output characteristic pattern or a driving characteristic correlated between a motor speed and an output torque.

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Kiuchi does not compensate for the deficiencies of Takaoka outlined above for claims 1, 12, 16 and 17. Nor does Kiuchi teach, disclose or suggest the additional features recited in claims 2-5, 7 and 13-15 depending therefrom. Instead, Kiuchi discloses electric power generation control on a hybrid vehicle using fuzzy reasoning. In particular, Kiuchi teaches determining throttle control by a generation / charge map to increment a throttle valve ΔTH using engine rotation speed N and incremental power $\Delta PENE$. See col. 16, line 43 – col. 17, line 48 and Fig. 15 of Kiuchi.

Further, there is no motivation to combine features related to SOC control of Takaoka with power control by fuzzy reasoning of Kiuchi, nor has the Office Action established sufficient motivation or a *prima facie* case of obviousness in conjunction with power to a drive shaft to combine the references. Even assuming that motivation to combine the applied references is established, the combination fails to teach or suggest Applicants' claimed features.

A *prima facie* case of obviousness for a §103 rejection requires satisfaction of three basic criteria: there must be some suggestion or motivation either in the references or knowledge generally available to modify the references or combine reference teachings, a reasonable expectation of success, and the references must teach or suggest all the claim limitations. See MPEP §706.02(j).

The Final Office Action fails to satisfy this burden for obviousness using the combination of Takaoka and Kiuchi. Therefore, Applicants assert that claims 1, 12, 16 and 17 are patentable over the applied references. By extension, these arguments are also applicable to claims 2-5, 7, 11 and 15 by their dependency from claims 1 and 12.

For at least these reasons, Applicants respectfully assert that the independent claims are now patentable over the applied references. The dependent claims are likewise patentable over the applied references for at least the reasons discussed as well as for the additional

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features they recite. Consequently, all the claims are in condition for allowance. Thus, Applicants respectfully request that the rejection under 35 U.S.C. §103 be withdrawn.

IV. Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully submit that this application is in condition for allowance. Favorable consideration and prompt allowance are earnestly solicited.


Should the Examiner believe that anything further is desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the telephone number listed below.

Respectfully submitted,

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JUN 26 2003

T.C. 2800


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Attachment:

Information Disclosure Statement with PTO-1449

Date: June 12, 2003

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